

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-214354

DATE: June 14, 1984

MATTER OF: Extinguisher Service, Inc.

DIGEST:

A bidder's failure to complete representations contained in Standard Form 33, including the small business size status representation, is a minor informality which the bidder must be given an opportunity to correct.

Extinguisher Service, Inc. protests the rejection of its low bid by the General Services Administration (GSA) under invitation for bids (IFB) No. WFCG-GB-R-1076 to inspect and maintain fire extinguishers. We sustain the protest.

The protester's bid was found nonresponsive because certain representations contained on page 2 of Standard Form 33 were not completed. Specifically, Extinguisher Service did not complete the provisions concerning small business size status, minority business enterprise, regular dealer-manufacturer, contingent fee, and affiliation and identifying data. GSA awarded the contract to the second low bidder, AABCO, Inc.

We have held that the completion of the representations in question is not required to determine whether a bid meets the requirements of the specifications or other solicitation provisions, and therefore does not affect bid responsiveness. Dubicki & Clarke, Inc., B-190540, Feb. 15, 1978, 78-1 CPD ¶ 132; Bryan L. and F.B. Standley, B-186573, July 20, 1976, 76-2 CPD ¶ 60. Accordingly, the omissions made by the protester were minor informalities, which the contracting officer was required either to waive or to give the bidder an opportunity to cure. See Federal Procurement Regulations (FPR), 41 C.F.R. § 1-2.405 (1983).

We note that this procurement was a total small business set-aside, and that in rejecting Extinguisher Service's bid the contracting officer placed particular emphasis on the protester's failure to certify itself as

a small business. As the contracting officer points out, in the absence of the protester's self certification, the bid was ineligible for award under section 1-1.703-1(c)(3) of the FPR. See Anderson-Cottonwood Disposal, 58 Comp. Gen. 713 (1979), 79-2 CPD ¶ 98. The cited regulation, however, also refers to section 1-2.405(b) of the FPR, which requires that the contracting officer give a bidder the chance to cure any deficiency resulting from a minor informality or irregularity in the bid such as the bidder's failure to furnish required information concerning the number of its employees.¹ Further, while GSA states that it is aware of no decision by our Office on this point, in fact we have consistently treated a bidder's failure to complete the small business size status representation as a minor informality.² Id.; Dubicki & Clarke, Inc., supra.

We conclude that the protester should have been given an opportunity to cure the deficiencies contained in its bid, and we recommend that it now be permitted to do so. If the appropriate corrections are made, the contract with AABCO should be terminated and award should be made to Extinguisher Service, if otherwise proper.

Extinguisher Service's protest is sustained.

AABCO has questioned Extinguisher Service's eligibility to compete as a small business. However, the Small Business Administration, not this Office, has statutory authority to make conclusive determinations on matters of small business size status for federal procurements. 15 U.S.C. § 637(b) (1982); see Williamson Machine Co., Inc., B-210580, Feb. 7, 1983, 83-1 CPD ¶ 136. Accordingly, we do not review size status questions.

¹By way of comparison, Defense Acquisition Regulation § 2-405 (1976 ed.) cites the same example but also lists failure to make a size status representation as an example of a waivable minor informality.

²We have distinguished this representation as to whether the bidder is or is not a small business from a second small business representation contained in the same clause of Standard Form 33, which is a matter of bid responsiveness. See Mechanical Mirror Works, Inc., B-210750.2, Oct. 20, 1983, 83-2 CPD ¶ 467. The second representation pertains only to supply contracts, and requires the bidder to represent whether or not all supplies to be furnished will be manufactured or produced by a small business concern.

This decision contains a recommendation that corrective action be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 720 (1982), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.

for *Milton J. Aorlan*
Comptroller General
of the United States